

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



## F2.5

January 25, 2008

TO: Coastal Commissioners and Other Interested Persons

FROM: Peter Douglas, Executive Director  
Susan Hansch, Chief Deputy Director  
John Bowers, Staff Counsel  
Madeline Cavalieri, Coastal Program Analyst  
Jeff Staben, Administrative Assistant

SUBJECT: **Public hearing on minor amendments requested by the Office of Administrative Law to section 13055(h) of the Commission's regulations concerning filing fees and revisions clarifying the Statement of Reasons**

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*Staff recommends that the Commission hear public testimony, approve revisions to the Statement of Reasons, and adopt revised amendments to section 13055 of the Commission's regulations regarding filing fees as requested by the Office of Administrative Law.*

On July 13, 2007, the Commission authorized staff to commence the rulemaking process to amend its regulations. On October 12, 2007, the Commission approved 6 revisions to the originally proposed regulations, and on November 14, 2007, the Commission adopted the amendments as proposed.

Staff submitted the final rulemaking package to the Office of Administrative Law (OAL) on December 3, 2007. The OAL disapproved the Commission's regulation amendments for failure to comply with the clarity and necessity standards of Government Code section 11349.1. The Decision of Disapproval is attached as Exhibit F. The decision addresses the following four concerns:

**1. Lack of clarity in section 13055(h)(2)**

Section 13055(h)(2) directs the executive director of the Commission to waive the fee, in full or in part, for applications for projects that include affordable housing. The OAL found that "an applicant would not easily understand from the regulation text [as adopted] under what circumstances the executive director may or may not waive the fee..." and that "...an applicant

would not know what criteria the executive director would use in determining whether the fee should be waived in full or in part, and if in part, how the amount waived would be determined.”

In response to the OAL’s concerns, Commission staff revised section 13055(h)(2) in two ways. First, staff replaced the word “may” with “shall” in the first sentence. This reflects the Commission’s intent to offer the fee reduction to all qualifying applicants and addresses the OAL’s concern that an applicant would not know if the fee “may or may not” be waived. Second, staff added the following language regarding the criteria that the executive director will use to determine the portion of the fee to be waived:

“Applications for projects that will create a greater public benefit will have a larger portion of the fee waived than applications for projects that will create a lesser public benefit. The executive director will determine the degree of public benefit based on a variety of factors, including, but not limited to (A) the total number of affordable units, (B) the proportion of affordable units in the development, (C) the degree of affordability, and (D) the availability of, and demand for, affordable units in the area. Applications for projects that will exceed current requirements for affordable housing under the law will receive a larger fee waiver than applications for projects which do not.”

These criteria are not exhaustive; the executive director may use criteria in addition to the ones identified to determine the portion of the fee to be waived.

## **2. Lack of clarity in section 13055(h)(3)**

Section 13055(h)(3) directs the executive director of the Commission to waive 40% of the fee for applications for green buildings. The OAL found that “an applicant would not easily understand from the regulation text [as adopted] under what circumstances the executive director may or may not reduce the filing fees...” and that “...the regulation does not specify from whom a third-party certification program must obtain approval, and if the approval is to be obtained from the Commission, what criteria the Commission would use in determining whether to grant such approval.”

In response to the OAL’s concerns, Commission staff revised section 13055(h)(3) in two ways. First, staff replaced the word “may” with “shall” in the first sentence. This reflects the Commission’s intent to offer the discount to all qualifying applicants and addresses the OAL’s concern that an applicant would not know if the fee “may or may not” be waived. Second, staff added the following language to clarify how the executive director will determine if an alternative green building certification is equivalent to the LEED Gold standard:

“The executive director shall determine if an alternative certification is equivalent to the LEED Gold standard based on a comprehensive review of the certification program’s ability to ensure an equivalent or greater environmental benefit.”

These amendments as well as the proposed regulations are included as Exhibits A through E; originally proposed amendments are shown in strikeout and underline, previous revisions are

shown in double strikeout and double underline and newly proposed revisions are shown in **double strikeout and italics and double underline and italics**.

### **3. Lack of illustrated necessity for fee amounts**

The OAL also found that “the information given [in the Initial Statement of Reasons] is not sufficient to determine how each of the new fee amounts were arrived at by the Commission. Information explaining how the new fee amounts were determined should be added to the record and made available to the public pursuant to Government Code section 11347.1.”

In response to the OAL’s concerns, staff revised the Statement of Reasons to include a more detailed description of the analysis used to determine the appropriate fee amounts for each category. Staff also added an exhibit to the Statement of Reasons displaying the estimated filing fee revenue. This exhibit illustrates the relationship between the individual fees and the sum of the filing fee revenue. The revisions are shown in strikeout and underline in the revised Statement of Reasons, attached as Exhibit G.

Staff mailed a 15-day notice of the proposed revisions on January 23, 2008. The notice is attached as Exhibit H. The deadline for public comments is February 7, 2008. The Commission is only required to respond to comments on newly proposed revisions. The Commission will not respond to comments regarding the remainder of the rulemaking package adopted at the November 14, 2007 Commission hearing.

### **4. Authority and Reference Citations**

The regulation text submitted did not include authority and reference citations and included several misspelled words and other typing errors. The authority and reference citations have been added and the errors have been fixed on the regulations, attached as Exhibits A through E. The corrected regulations will be submitted with the final rulemaking package.

#### **At the February 2008 meeting, staff recommends that the Commission:**

1. Open and take public testimony solely focused on the newly proposed minor revisions to the amendments and the revisions to the Statement of Reasons.
2. Approve revisions to the Statement of Reasons.
3. Approve staff’s response(s) to public comments, if any, on the revisions. (These responses will be available on the day of the hearing.)
4. Adopt the regulation amendments. (The motion is on page 4.)

#### **The following next steps will occur:**

1. The Commission may adopt the package of minor regulation amendments at the February hearing as long as no additional revisions are made at that time. If the Commission does

make changes to the package of regulation amendments at the February 2008 hearing, the rulemaking provisions of state law will require an additional comment period.

2. After the Commission responds to all public comments in writing and adopts the regulations, staff will revise the final statement of reasons and re-submit the final rulemaking package to the OAL, which has 30 days to approve or reject the Commission's re-submittal. The OAL will approve the regulations if they determine that they comply with the standard of review put forth by Government Code section 11349.1 for necessity, authority, clarity, consistency, reference and nonduplication.
3. After the OAL approves the package, the amended regulations will be filed with the Secretary of State and will become legally effective.

### **STAFF RECOMMENDATION**

Staff recommends that the Commission take public testimony limited to comments on the proposed minor revisions, approve the revisions to the statement of reasons, and adopt the revised regulation amendments.

### **MOTION**

The staff recommends a **YES** vote on the following motion:

**MOTION:** *"I move that the Commission adopt amendments to section 13055 of the Commission's regulations described in the '15 Day Notice of Revisions to Proposed Regulations (prepared for comment period commencing January 23, 2008 and ending February 7, 2008).'"*

Passage of the above motion will result in adoption of the following resolution:

### **RESOLUTION**

The Commission hereby adopts amendments to section 13055 of the Commission's regulations described in the "15 Day Notice of Revisions to Proposed Regulations (prepared for comment period commencing January 23, 2008 and ending February 7, 2008)" for the reasons set forth in the revised Statement of Reasons and directs staff to prepare a Final Rulemaking Package that incorporates said amendments and revised Statement of Reasons to submit to OAL for its approval.

List of Exhibits:

- A.) Amendments to Section 13055
- B.) Amendments to Section 13111
- C.) Amendments to Section 13169
- D.) Amendments to Section 13255
- E.) Amendments to Section 13576
- F.) OAL Decision of Disapproval of Regulatory Action
- G.) Revisions to the Statement of Reasons
- H.) 15-Day Notice of Revisions to Proposed Regulations

ARTICLE 4. SCHEDULE OF FILING FEES FOR FILING AND PROCESSING PERMIT APPLICATIONS AND OTHER FILINGS

§ 13055. Fees.

(a) ~~Permit filing and processing fees~~ Filing fees for processing coastal development permit applications shall be as follows:

- (1) ~~Two hundred dollars (\$200)~~ \$2,500 for any development qualifying for an administrative permit.
- (2) (A) For up to 4 detached, single-family residences ~~a single-family residence~~, the fee for each residence shall be based on the square footage of the proposed residence as shown in the following table:

Square Footage of Proposed Residence	Fee
1500 or less	<del>\$250</del> <u>\$3,000</u>
1501 to 5000	<del>\$500</del> <u>\$4,500</u>
<del>5001 or more</del> <u>5001 to 10,000</u>	<del>\$1000</del> <u>\$6,000</u>
10,001 or more	<u>\$7,500</u>

(B) For more than 4 detached, single-family residences, the fee shall be as follows:

- (1) For residences of 1500 square feet or less, the fee shall be \$15,000 or \$1,000 per residence, whichever is greater, but not to exceed \$100,000;
- (2) For residences of 1501 to 5000 square feet, the fee shall be \$22,500 or \$1,500 per residence, whichever is greater, but not to exceed \$100,000;
- (3) For residences of 5001 to 10,000 square feet, the fee shall be \$30,000 or \$2,000 per residence, whichever is greater, but not to exceed \$100,000;
- (4) For residences of 10,001 or more square feet, the fee shall be \$37,500 or \$2,500 per residence, whichever is greater, but not to exceed \$100,000.

For developments that include residences of different sizes, the fee shall be based upon the average square footage of all the residences.

(C) As used herein, the term “square footage” includes gross internal floor space of the main house and attached garage(s), plus any detached structures (e.g., guest

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houses, detached bedrooms, in-law units, garages, barns, art studios, tool sheds, and other outbuildings.)

(3) ~~Six hundred dollars (\$600) for lot line adjustments, or for divisions of land where there are single family residences already built and only one new lot is created by the division of~~

(3) (A) ~~f~~ For multi-family units up to 4 attached residential units the fee shall be \$7,500. up to four (4) units.

(4) (B) ~~For more than 4 attached residential units, the fee shall be Two thousand dollars (\$2,000) \$10,000 or one hundred twenty dollars (\$120) \$750 per unit, whichever is greater, but not to exceed twenty thousand dollars (\$20,000) \$50,000. for multi-unit residential development greater than four (4) units.~~

(54) All residential projects ~~(whether single or multi-unit)~~ that include more than ~~75~~ 50 cubic yards of grading shall be subject to an additional fee ~~of two hundred dollars (\$200)~~ as shown on the following table:

Cubic Yards of Grading	Fee
51 to 100	\$500
101 to 1000	<del>\$750</del> <u>\$1,000</u>
1001 to 10,000	<del>\$1,000</del> <u>\$2,000</u>
10,001 to 100,000	<del>\$1,250</del> <u>\$3,000</u>
100,001 <del>or more</del> to 200,000	<del>\$1,500</del> <u>\$5,000</u>
200,001 or more	<u>\$10,000</u>

This fee does not apply to residential projects that qualify for administrative permits.

(65) For office, commercial, convention, or industrial (including energy facilities as defined in Public Resources Code section 30107) development, and for all other development not otherwise identified in this section, the fee shall be ~~based upon~~ based upon either the gross square footage as shown in (5)(A) or the development cost as shown in following table: (5)(B) whichever is greater.

(A) Fees based upon gross square footage shall be as follows:

Square Footage of Proposed Proposed Development	Fee
1000 or less	<del>\$500</del> <u>\$5,000</u>
1001 to 10,000	<del>\$2,000</del> <u>\$10,000</u>
10,001 to 25,000	<del>\$4,000</del> <u>\$15,000</u>
25,001 to 50,000	<del>\$8,000</del> <u>\$20,000</u>

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50,001 to 100,000	<del>\$12,000</del> <u>\$30,000</u>
100,001 or more	<del>\$20,000</del> <u>\$50,000</u>

- (7) ~~Twenty thousand dollars (\$20,000) for major energy production and fuel processing facilities, including but not limited to, the construction or major modification of offshore petroleum production facilities, tanker terminals and mooring facilities, generating plants, petroleum refineries, LNG gassification facilities and the like.~~
- (8) (B)(1) ~~For changes in intensity of use; for office, commercial, convention or industrial development not otherwise identified in this section; and for all other development not otherwise identified in this section; the fee shall be based on the development cost as shown in the following table~~ Fees based upon development cost shall be as follows:

Development Cost	Fee
<del>\$50,000</del> <u>\$100,000</u> or less	<del>\$3,000</del>
<del>\$50,001 to \$100,001</del> <u>\$100,001 to \$500,000</u> or less	<del>\$600</del> <u>\$6,000</u>
<del>\$100,001 to \$500,001</del> <u>\$500,001 to \$2,000,000</u>	<del>\$2,000</del> <u>\$10,000</u>
<del>\$500,001 to 1,250,000</del> <u>\$2,000,001 to \$5,000,000</u>	<del>\$4,000</del> <u>\$20,000</u>
<del>\$1,250,001 to 2,500,000</del> <u>\$5,000,001 to \$10,000,000</u>	<del>\$8,000</del> <u>\$25,000</u>
<del>\$2,500,001 to 5,000,000</del> <u>\$10,000,001 to \$25,000,000</u>	<del>\$12,000</del> <u>\$30,000</u>
<del>\$5,000,001 or more to \$10,000,000</del> <u>\$25,000,001 to \$50,000,000</u>	<del>\$20,000</del> <u>\$50,000</u>
<del>\$10,000,001 to \$100,000,000</del> <u>\$50,000,001 to \$100,000,000</u>	<del>\$100,000</del>
<del>\$100,000,001 or more</del>	<del>\$250,000</del>

(2) As used herein, the term “development cost” includes all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission’s jurisdiction.

- (96) ~~Two hundred dollars (\$200)~~ \$1,000 for immaterial amendments to coastal development permits, and fifty percent (50%) of the permit fee that would currently apply to the permitted development for material amendments to coastal development permits.
- (107) ~~Two hundred dollars (\$200)~~ \$1,000 for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow-up coastal development permit.
- (11) ~~Two hundred dollars (\$200) for extensions and reconsiderations of coastal development permits for single family dwellings.~~
- (12) ~~Four hundred dollars (\$400) for extensions and reconsiderations of all other coastal development permits.~~

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(13) ~~Two hundred dollars (\$200) for a "de minimis" waiver of a coastal development permit application pursuant to section 30624.7 of the Coastal Act and for a waiver pursuant to sections 13250(c) and 13253(c) of these regulations.~~

(14) ~~One hundred dollars (\$100) for a second continuance and any subsequent continuance requested by the applicant and approved by the commission. There is no fee charged for the first continuance requested by the applicant.~~

(15) ~~Five hundred dollars (\$500)~~ \$2,500 for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be ~~two hundred dollars (\$200)~~ \$1,000.

(b) Filing fees for filings other than coastal development permit applications shall be as follows:

(1) (A) \$500 for either an extension or reconsideration of coastal development permit for a single-family dwellings.

(B) \$1,000 for an extension or reconsideration of any other coastal development permit.

(2) \$500 for a "de minimis" waiver of a coastal development permit application pursuant to Public Resources Code section 30624.7 and for a waiver pursuant to sections 13250(c) and 13253(c) of this title.

(3) \$250 for any written confirmation of exemption from permit requirements of Public Resources Code section 30600.

(4) \$1,000 for any continuance requested by the applicant, except the first continuance.

(5) The filing fee for:

(A) any certification of consistency that is submitted to the Commission pursuant to sections 307(c)(3)(A) or (B) of the Coastal Zone Management Act of 1972 (16 USC section 1456(c)(3)(A),(B)), or

(B) any appeal to the Commission pursuant to Public Resources Code sections 30602 or 30603(a)(5) by an applicant of a denial of a coastal development permit application

shall be determined in accordance with the provisions of subsection (a).

(6) The request for a boundary determination pursuant to either section 13255.1 or 13576(c) shall be accompanied by a filing and processing fee of \$250. For a request for a

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boundary determination pursuant to section 13255.1 or 13576(c)(2) that pertains to two or more parcels, the fee shall be paid on a per parcel basis.

(7) The request for a boundary adjustment pursuant to section 13255.2 shall be accompanied by a filing and processing fee of \$5,000.

(c) The fees established in this section shall be increased annually by an amount calculated on the basis of the percentage change from the year in which this provision becomes effective in the California Consumer Price Index for Urban Consumers as determined by the Department of Industrial Relations pursuant to Revenue and Taxation Code Section 2212. The increased fee amounts shall become effective on July 1 of each year. The new fee amounts shall be rounded to the nearest dollar.

(db) Fees for an after-the-fact (ATF) permit application shall be ~~doubled~~ reduced five times the amount specified in section (a) unless such added increase ~~is~~ is ~~are waived~~ reduced by the Executive Director when it is determined that ~~the permit could be processed by staff without significant additional review time resulting from the processing of the violation.~~ either:

- (1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or
- (2) the owner did not undertake the development for which the owner is seeking the ATF permit,

but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(ee) Where a development consists of a land division ~~including, but not limited to, lot line adjustments or issuance of a conditional certificate of compliance pursuant to Government Code section 66499.35(b), each lot shall be considered as one single family residence for the purpose of calculating the application fee~~ the fee shall be \$3,000 for each of the first four lots, plus \$500 \$1,000 for each additional lot. If an application includes both subdivision and the construction of residences, the fee shall be based upon the construction of the proposed residences with no additional fee for the subdivision. Conversion to condominiums shall be considered a division of the land.

(fd) ~~Except as provided in subsection (e) above, if~~ If different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for

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residential development exceed \$100,000 and in no case shall the fee for all other development such application exceed twenty thousand dollars (\$20,000) exceed \$250,000.

(ge) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in ~~its consideration of~~ processing the permit application, including the costs of providing public notice. Notwithstanding the foregoing, the commission shall not require an applicant for a permit for one single-family dwelling to reimburse it for litigation costs or fees that the commission may incur in defending a judicial challenge to the commission's approval of the permit.

(fh) The fees specified in sections (a) and (b) may be modified under the following circumstances:

- (1) The executive director shall waive the application fee where requested by resolution of the commission.
- (2) The executive director of the commission ~~may~~ shall waive the filing and processing fee in full or in part for an application for a housing development that contains housing units the occupancy of which by persons of low or moderate income as defined in Health and Safety Code section 50093 is assured for the period of time specified in Government Code section 65915(c)(1). Applications for projects that will create a greater public benefit will have a larger portion of the fee waived than applications for projects that will create a lesser public benefit. The executive director will determine the degree of public benefit based on a variety of factors, including, but not limited to (A) the total number of affordable units, (B) the proportion of affordable units in the development, (C) the degree of affordability, and (D) the availability of, and demand for, affordable units in the area. Applications for projects that will exceed current requirements for affordable housing under the law will receive a larger fee waiver than applications for projects which do not.
- ~~(3) The executive director of the commission may waive the filing and processing fee in full or in part for an application that displays extraordinary characteristics which substantially benefit coastal resources, such as sustainable site and building design, water and energy efficiency, habitat protection and public transportation elements.~~
- (3) For applications received prior to January 1, 2015, the executive director of the Commission ~~may~~ shall reduce the filing fee for projects that are certified at a minimum of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Gold standard or equivalent. The executive director shall determine if an alternative certification is equivalent to the LEED Gold standard based on a comprehensive review of the certification program's ability to ensure an equivalent or greater environmental benefit. After registering a project with an approved third-party

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certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute approved by the executive director in the amount of the remainder of the required filing fee. After submitting proof of certification at a minimum of LEED Gold or equivalent, the letter of credit or other cash substitute will be released by the Commission to the applicant. If the applicant does not receive a minimum of LEED Gold certification or equivalent within three years of the date of permit issuance, the Commission will cash the letter of credit or other cash substitute. The executive director may grant an extension of the three year deadline for good cause. Request for extension must be submitted to the executive director in writing at least 60 days prior to the deadline, outlining the reason for the request and the expected completion date. The extension shall not exceed one year.

(ig) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to sections (a)(2) (15), (b) (f) above this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Sections 30620(c) and 30253, Public Resources Code.

§ 13111. Filing of Appeal.

(a) An appeal of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two (2) members of the Commission.

The appeal must contain the following information:

- (1) the name and address of the permit applicant and appellant;
- (2) the date of the local government action;
- (3) a description of the development;
- (4) the name of the governing body having jurisdiction over the project area;
- (5) the names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;
- (6) the names and addresses of all other persons known by the appellant to have an interest in the matter on appeal;
- (7) the specific grounds for appeal;
- (8) a statement of facts on which the appeal is based;
- (9) a summary of the significant question raised by the appeal.

The filing of the notice of appeal should also contain information which the local government has specifically requested or required.

(b) For an appeal to the Commission by an applicant pursuant to Public Resources Code sections 30602 or 30603(a)(5) of a denial of a coastal development permit application, the applicant shall submit a filing fee in accordance with the provisions of section 13055(b)(5)(B).

~~(b)~~ The appeal must be received in the Commission district office with jurisdiction over the local government on or before the tenth (10th) working day after receipt of the notice of the permit decision by the executive director.

~~(e)~~ The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing

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**Adopted Amendments to § 13111**

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address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

AUTHORITY: Sections 30333, 30620.6, Public Resources Code. REFERENCE: Sections 30620.6, 30625, ~~30620(c)~~, Public Resources Code.

ARTICLE 6. EXTENSION OF PERMITS

§ 13169. Extension of Permits.

(a) Prior to the time that commencement of development under a permit granted by either the regional commission or the commission must occur under the terms of the permit or Section 13156, the applicant may apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The executive director shall not accept the application unless it is accompanied by all of the following:

- (1) evidence of an approved, unexpired permit,
- (2) evidence of the applicant's legal interest in the property involved in the permit,
- (3) the fee specified in section 13055(b)(1) of these regulations, and
- (4) stamped envelopes addressed to each person specified in section 13054 of these regulations and each person who testified, orally or in writing at prior permit hearing(s).

(b) For those applications accepted, the executive director shall determine whether there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program, if applicable. If the executive director determines that there are no changed circumstances that may affect consistency of the development, he or she shall mail notice of such determination including a summary of the procedures set forth in this section to all parties the executive director has reason to know may be interested in the application including all persons identified in section 13054 of these regulations and all persons who participated in previous permit hearings. The applicant shall post such notice at the project site within three (3) days of the executive director's mailing of the notice to interested parties. The executive director shall also report the determination to the commission to provide the commission with an opportunity to object to the executive director's determination. The time for commencement of development shall be extended for one year from the expiration date of the permit if both of the following occur:

(1) no written objection to the executive director's determination is received within 10 working days after mailing notice, and

(2) three commissioners do not object to the executive director's determination.

(c) If the executive director received a written objection to his or her determination but concludes that the objection does not identify changed circumstances that may affect the consistency of the development with the Coastal Act or a certified local coastal program, if applicable, the executive director shall report this conclusion to the commission at the same time that the executive director reports the determination to the commission in accordance with subsection (b)

above. The executive director shall provide a copy of the letter(s) of objection to the commission with the report. If three commissioners object to the extension on grounds that there may be changed circumstances that affect consistency, the executive director shall schedule the extension for hearing(s) in accordance with subsection (d) below. If three commissioners do not object to the extension, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(d) If the executive director receives an objection to his or her determination and concludes that the objection identifies changed circumstances that may affect the consistency of the development or if the executive director determines that due to changed circumstances the proposed development may not be consistent, the application shall be scheduled for a hearing on whether there are changed circumstances that affect consistency. The executive director shall provide notice of such hearing to any person(s) the executive director has reason to know would be interested in the matter. The executive director shall prepare a report for the hearing that describes any pertinent changes in conditions or circumstances relating to each requested permit extension.

(1) If three (3) commissioners determine that there are changed circumstances that affect consistency of the development with Chapter 3 policies of the Coastal Act or with a certified local coastal program if applicable, the extension shall be denied and upon payment of the filing fee specified in section 13055(a) of these regulations for an application for a coastal development permit the development shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations. However, except as otherwise provided in the preceding sentence, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances.

(2) If no such determination is made by three commissioners, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(e) Any extensions applied for prior to the expiration of the permit shall automatically extend the time for commencement of development until such time as the commission has acted upon the extension request; provided, however, that the applicant shall not undertake development during the period of automatic extension provided in this section.

(f) The procedures specified in this section shall apply to extensions of all permits approved by the commission, including those approved on appeal, on the consent calendar and as administrative permits.

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Sections 30600, 30604 and 30620.6 Public Resources Code.



ARTICLE 1. BOUNDARY ADJUSTMENT AND BOUNDARY DETERMINATION  
REQUESTS

§ 13255.0. Scope.

This subchapter shall govern (a) the request for a determination of the precise location of a particular parcel or area of land in relation to the boundary of the coastal zone, and (b) the request, review and implementation of proposed minor adjustments to the inland boundary of the coastal zone pursuant to Public Resources Code Section 30103(b). Boundary adjustments made pursuant to this subchapter shall be determinative for all purposes with respect to the California Coastal Act of 1976.

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Section 30103(b), Public Resources Code.

§ 13255.1. Request for Boundary Determination

Any request for a written determination by the Commission of the precise location of a particular parcel or area of land in relation to the boundary of the coastal zone shall be accompanied by payment of the fee set forth in Section 13055(b)(6).

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Section 30103(b), Public Resources Code.

§ 13255.~~4~~2. Request for Boundary Adjustment.

(a) The owner of the affected lot or parcel, the local government of jurisdiction, or the executive director of the commission may propose that the inland boundary of the coastal zone be adjusted to avoid bisecting any lot or parcel, or to conform the boundary to readily identifiable natural or manmade features. The request to adjust the boundary shall be made in writing to the commission.

(b) The request for a boundary adjustment shall be accompanied by sufficient information to enable the commission to determine whether the proposed adjustment is consistent with Public Resources Code Section 30103(b). This information shall include:

- (1) Name and address of the owner of the affected lot or parcel.
- (2) Names and addresses of all occupants of the affected lot or parcel.
- (3) A description and documentation of the applicant's legal interest in the affected lot or parcel.

**California Coastal Commission – Z07-0831-01**

**Adopted Amendments to §13255**

*Originally Proposed Amendments are shown in Strikeout and Underline*

*Revisions are shown in Double Strikeout and Double Underline*

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- 4) Names and addresses of all owners and occupants of all lots or parcels wholly or partially within 100 feet of the affected lot or parcel and the addresses of all such lots or parcels;
  - (5) A map of suitable scale to show the present and proposed location of the coastal zone boundary, all lots or parcels within 100 feet of the affected lot or parcel, and the existence and location of all readily identifiable natural and manmade features;
  - (6) A description of the existing use of the affected lot or parcel and the nearby lands.
  - (7) A discussion of the reasons is for the request that the coastal zone boundary be adjusted.
- (c) The person requesting the adjustment shall post a conspicuous notice of the proposed adjustment at the time the request is submitted to the commission. The form and location of the posted notice shall be similar to that required by Section 13054(b) for permit matters.
- (d) The request for a boundary adjustment shall be accompanied by a filing and processing fee as set forth in Section 13055(b)(7). ~~to be paid by check or money order in an amount determined as follows:~~
- ~~—(1) Twenty five dollars (\$25) if the portion of the lot or parcel affected by the adjustment is less than or equal to five acres in area.~~
  - ~~—(2) Fifty dollars (\$50) if the portion of the parcel affected by the adjustment is greater than five acres but less than or equal to forty acres in area.~~
  - ~~—(3) One hundred dollars (\$100) if the portion of the parcel affected by the adjustment is greater than forty acres but less than or equal to one thousand acres in area.~~
  - ~~—(4) Two hundred and fifty dollars (\$250) if the portion of the parcel affected by the adjustment is greater than one thousand acres in area.~~

The executive director of the commission may waive the filing and processing fee in full or in part where the request concerns the same lot or parcel considered for a previous boundary adjustment or permit application where no substantial staff work is required or where the request is made by the local government of jurisdiction.

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Section 30103(b), Public Resources Code.

**§ 13255.23. Notification Requirements.**

The person requesting the adjustment shall provide notice to affected parties, property owners and occupants of any parcel within 100 feet of any boundary of the affected parcel and to any other persons known to be interested in the proposed boundary adjustments. This notice shall

**2/28/2008 – F2.5**

**Exhibit D**

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**California Coastal Commission – Z07-0831-01**

**Adopted Amendments to §13255**

*Originally Proposed Amendments are shown in Strikeout and Underline*  
*Revisions are shown in Double Strikeout and Double Underline*

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comply with the requirements prescribed in Section 13054 for permit matters.

AUTHORITY: Section 30333, Public Resources Code. REFERENCE: Section 30103(b), Public Resources Code.

ARTICLE 18. MAP REQUIREMENT AND BOUNDARY DETERMINATION CRITERIA

§ 13576. Map(s) of Areas of Commission Permit and Appeal Jurisdiction.

(a) In conjunction with final Local Coastal Program certification or the delegation of coastal development permit authority pursuant to Public Resources Code Section 30600.5, whichever occurs first, the Commission shall, after public hearing, adopt a map or maps of the coastal zone of the affected jurisdiction that portrays the areas where the Commission retains permit authority pursuant to Public Resources Code Sections 30603(a)(1) and (a)(2), or 30600.5(d). These maps shall be drawn based on the criteria for permit and appeal boundary determinations, set forth in Section 13577 below, and will serve as the official maps of the Commission's permit and appeal jurisdiction. The Commission, in consultation with the local government, shall update these maps from time to time, where changes occur in the conditions on which the adopted maps were based, or where it can be shown that the location of the mapped boundary does not adequately reflect the intended boundary criteria. Revisions of the adopted maps shall be based on precise boundary determinations made using the criteria set forth in Section 13577. The revised maps shall be filed with the affected jurisdiction within 30 days of adoption by the Commission. In addition, each adopted map depicting the permit and appeal jurisdiction shall include the following statement:

"This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Sections 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission"

(b) In the case of local governments which have received Commission approval of their Phase III (implementation) Work Program and Budget prior to January 1, 1980, the permit and appeal area maps shall be adopted by the Commission prior to the certification becoming effective pursuant to Section 13547 of the Commission's regulations.

(c) Any request for a written determination for either (1) interpretation or revision of any boundary shown in any permit and appeal jurisdiction map approved pursuant to subsection (a), or (2) a determination of the precise location of a particular parcel or area of land in relation to any boundary shown on any such map, shall be accompanied by payment of the fee set forth in Section 13055(b)(6).

AUTHORITY: Sections 30333, 30501 and 30620.6, Public Resources Code. REFERENCE: Sections 30519 and 30603, Public Resources Code.

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:	)	
	)	
	)	DECISION OF DISAPPROVAL
CALIFORNIA COASTAL COMMISSION	)	OF REGULATORY ACTION
	)	
	)	(Gov. Code, sec. 11349.3)
REGULATORY ACTION:	)	
Title 14, California Code of	)	
Regulations	)	OAL File No. 07-1203-01S
	)	
ADOPT SECTION 13255.1,	)	
AMEND SECTIONS 13055, 13111, 13169,	)	
13255.0, 13255.1, 13255.2, AND 13576	)	
	)	
	)	

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**SUMMARY OF REGULATORY ACTION**

The California Coastal Commission ("Commission") proposed to amend the California Code of Regulations, title 14, relating to its filing and processing fees. The Commission sought to increase fee amounts, add four new fee categories, add an escalator clause to update fees each year according to inflation, and add two new provisions for fee reductions.

**DECISION**

On January 16, 2008, the Office of Administrative Law ("OAL") disapproved the above referenced regulatory action for failure to comply with the clarity and necessity standards of Government Code section 11349.1.

**DISCUSSION**

The adoption of regulations by the California Coastal Commission must satisfy requirements established by the part of the California Administrative Procedure Act ("APA") that governs rulemaking by a state agency. Any rule or regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any rule or regulation subject to the APA may become effective, the rule or regulation is reviewed by the Office of Administrative Law for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards a rule or regulation must be legally

valid, supported by an adequate record, and easy to understand. In this review OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of rules and regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on rules and regulations before they become effective.

## 1. CLARITY

The Legislature in establishing OAL, found that regulations, once adopted, were frequently unclear and confusing to the persons who must comply with them. (Gov. Code, sec. 11340(b).) For this reason, OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the “clarity” standard. (Gov. Code, sec. 11349.1(a)(3).) “Clarity” as defined by Government Code section 11349(c) means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

- a. Section 13055 of title 14 establishes fees for the processing by the Commission of coastal development permit applications and other filings with the Commission. This regulatory action amends those provisions and adds a new subsection (h)(2) which provides in part:

“The executive director of the commission **may** waive the filing and processing fee **in full or in part** for an application for a housing development that contains housing units the occupancy of which by persons of low or moderate income as defined in Health and Safety Code section 50093 is assured....” (Emphasis added.)

An applicant would not easily understand from the regulation text under what circumstances the executive director may or may not waive the fee for an application for a housing development that contains housing units to be occupied by persons of low or moderate income. Also, if the decision was to waive the fee, an applicant would not know what criteria the executive director would use in determining whether the fee should be waived in full or in part, and if in part, how the amount waived would be determined.

- b. Section 13055 of title 14 establishes fees for the processing by the Commission of coastal development permit applications and other filings with the Commission. This regulatory action amends those provisions and adds a new subsection (h)(3) which provides in part:

“For applications received prior to January 1, 2015, the executive director of the Commission **may** reduce the filing fee for projects that are certified at a minimum of the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) Gold standard or equivalent. After registering a project with an **approved** third-party certification program, applicants expecting to obtain

certification that qualifies for the above-mentioned fee reduction must submit....”  
(Emphasis added.)

An applicant would not easily understand from the regulation text under what circumstances the executive director may or may not reduce the filing fees for a project that is certified at a minimum of the LEED Gold standard or equivalent. In addition, the regulation does not specify from whom a third-party certification program must obtain approval, and, if the approval is to be obtained from the Commission, what criteria the Commission would use in determining whether to grant such approval.

## **2. NECESSITY**

Government Code section 11349.1(a)(1) requires that OAL review all regulations for compliance with the “necessity” standard. Government Code section 11349(a) defines “necessity” to mean “. . . the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purpose of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.”

To further explain the meaning of substantial evidence in the context of the “necessity” standard, subdivision (b) of section 10 of the Title 1 of the California Code of Regulations provides:

“In order to meet the ‘necessity’ standard of Government Code section 11349.1, the record of the rulemaking proceeding shall include:

“(1) a statement of the specific purpose of each adoption, amendment, or repeal;  
and

“(2) information explaining why each provision of the adopted regulations is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An ‘expert’ within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.”

In order to provide the public with an opportunity to review and comment upon an agency’s perceived need for a regulation, the APA requires that the agency describe the need for the regulation in the initial statement of reasons. (Gov. Code, sec. 11346.2(b).) The initial statement of reasons must include a statement of the specific purpose for each adoption, amendment, or repeal, and the rationale for the determination by the agency that each regulation is reasonably necessary to carry out the purpose for which it is proposed or, simply restated, “why” a regulation is needed and “how” this regulation fills that need. (Gov. Code, sec. 11346.2(b)(1).)

The initial statement of reasons must be submitted to OAL with the initial notice of the proposed action and made available to the public during the public comment period, along with all the information upon which the proposal is based. (Gov. Code, secs. 11346.2(b) and 11346.5(a)(16) and (b).) In this way the public is informed of the basis of the regulatory action and may comment knowledgeably. The initial statement of reasons and all data and other factual information, studies or reports upon which the agency is relying in the regulatory action must also be included in the rulemaking file. (Gov. Code, sec. 11347.3(b)(2) and (7).)

The Initial Statement of Reasons ("ISOR") provided with this regulatory action explains that Commission staff first analyzed the complexity of applications that are received within each fee category and conducted a survey of local governments which charge fees in the Coastal Zone for application review that is similar to the application review performed by the Commission. It is clear from a comparison of the new fee amounts in section 13055 with the local government fee survey that more is needed to explain how the new fee amounts were actually determined. Although the ISOR goes on to discuss each category of fees in greater detail, the information given is not sufficient to determine how each of the new fee amounts were arrived at by the Commission. Information explaining how the new fee amounts were determined should be added to the record and made available to the public pursuant to Government Code section 11347.1.

### **3. AUTHORITY AND REFERENCE CITATIONS**

Subsection (a)(2) of Government Code section 11346.2 provides:

"The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations."

Subsection (b) of Government Code section 11349 provides:

"'Authority' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation."

Subsection (e) of Government Code section 11349 provides:

"'Reference' means the statute, court decision, or, other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation."

The regulation text submitted with this regulatory action did not include authority and reference citations as required by subsection (a)(2) of Government Code section 11346.2. This minor defect can be easily remedied.

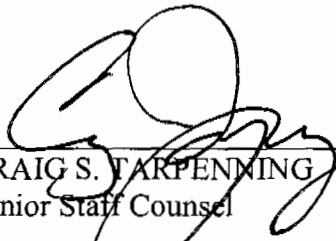


We also note that (1) the proposed changes deleted too many words from the second sentence of existing section 13055(d), (2) the depiction of existing regulation language in the regulation text submitted with this regulatory action contained some discrepancies from what is actually printed in the California Code of Regulations, and (3) the proposed new text submitted with this regulatory action contained some misspelled words.

### CONCLUSION

For the reasons set forth above, OAL has disapproved this regulatory action. If you have any questions, please contact me at (916) 323-6808.

Date: January 23, 2008



CRAIG S. TARPENNING  
Senior Staff Counsel

for: SUSAN LAPSLEY  
Director

Original: Peter Douglas, Executive Director  
cc: Madeline Cavalieri

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**REVISIONS TO THE INITIAL STATEMENT OF REASONS**  
**FOR PROPOSED AMENDMENTS OF THE**  
**CALIFORNIA COASTAL COMMISSION'S**  
**FILING FEE REGULATIONS**

**(Prepared for comment period commencing January 23, 2008**  
**September 14, 2007 and ending October 29, 2007 February 7, 2008)**

The California Coastal Commission (hereinafter "Commission") proposes to amend various sections of the Commission's regulations in Chapters 5, 6 and 8 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters include fees for filing applications with the Commission. The proposed amendments update the Commission's filing fees, reorganize the regulations for clarity, and clarify ambiguities. The majority of the Commission's fees are contained within section 13055 of the regulations. Other sections related to filing fees which are proposed to be amended are: 13111, 13169, 13255 and 13576.

The proposed amendments include the following:

1. Increased fee amounts
2. New fee categories for:
  - a. Federal Consistency Certifications
  - b. Boundary Determinations
  - c. Appeals pursuant to sections 30602 and 30603(a)(5) of the Coastal Act
  - d. Written exemptions from coastal development permits
3. Escalator clause, in proposed section 13055(c), which would allow the Commission to update the fees each year according to inflation without undertaking the rulemaking process
4. Two new provisions for fee reductions in proposed sections 13055(h)(2) and 13055(h)(3): one for affordable housing and one for green building

The Coastal Commission has been collecting filing fees since its inception. The average annual income in the 16 years of the current 1991 fee structure is \$572,254. The 16 year high is \$799,987 and 16 year low is \$424,840. Since the passage of the Coastal Act of 1976, all application and other filing fees collected by the Commission were deposited in the state General Fund from FY 1976-1977 through FY 1998-1999.

Starting in FY 1999-2000 legislation (Chapter 782, 1997) redirected all permit fees from the General Fund to the State Coastal Conservancy's Coastal Access Account. The purpose of the redirection of the permit fees was to use coastal permit fees for critical coastal access projects

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**Exhibit G**

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including operation and maintenance of access ways that can not be funded from bond funds. Fines and penalties resulting from the resolution of coastal permit violation are deposited in the State Coastal Conservancy's Violation and Remediation Account.

All the Commission's permit fees currently go to the Coastal Conservancy's Coastal Access Account. Any redirection of increased fees to the General Fund would require legislative action. The Commission plans to seek legislation to redirect a portion of the increased fees to the general fund to be used to augment the Commission's baseline budget. Budget augmentations will be requested and are essential to support additional staff and operating expenses so that the Coastal Commission can meet its legal mandates under the Coastal Act and provide essential and timely services to the public.

The purpose of the amendments is to establish fees that are based on a portion of the average costs that the Commission incurs in processing permit applications and other filings. Currently, the Commission's filing fee revenue, which is directed to the Coastal Access Account, constitutes approximately 8% of its regulatory budget. The proposed amendments would increase the filing fee revenue so that it would constitute 20% to 36% ~~up to 50%~~ of the Commission's annual regulatory costs and budget. Because there are numerous categories of regulatory actions that the Commission cannot charge fees for, such as Local Coastal Program amendments and public agency applications, the Commission thinks that a target of no more than 50% of the Commission's regulatory costs is appropriate.

The proposed fees are not an exact portion of actual costs to the Commission for each permit. The Commission is unable to show actual costs spent per permit because to do so would require an entirely new accounting system, and new staff to implement that system. The Commission does not currently have funding to implement such a system, and such a system would be problematic, given the nature of the Commission's work.

It is also not possible to show actual costs per permit based on total annual costs. The is because the applications filed in a given year, are rarely granted a permit that same year. Therefore, costs in a given year, do not reflect the filings received in that year. Also, some permits require one year or less to review, and some require 2, 5 or even 10 years to review. Because the Commission has rejected the approach of a full cost recovery system, and is currently not capable of representing its actual costs per permit, the Commission has proposed to continue to implement its flat fee system. Although costs can vary widely for different applications of the same type, the fee is always the same. Because the Commission's projected filing fee revenue is only 20% to 36% of its annual costs, the Commission would not charge any given applicant a fee that is higher than the cost of review.

The Commission has increased its fees based on the existing fee structure. Some fees were increased more than others, based on the average complexity of each application type. The proposed fees were reviewed by a team of Commission staff members with a broad range of experience in permit and regulatory work to ensure that the fee structure is fair and commensurate with the complexity of review and level of work required. In creating the fee

schedule, the Commission also considered public input. Thus, the Commission and its staff have built a fair and accurate fee structure.

The current fees range from \$200 to \$20,000. The proposed increase in revenue would raise the filing fee revenue to between \$2M and \$3.6M. This is four to seven times the current revenue. If the Commission were to increase all fees by a factor of four to seven, the fees for each category would not be comparable to the Commission's associated costs. For example, a five-fold increase would raise the fees for both waivers and administrative permits from \$200 to \$1000. Although many waivers require more than \$1,000 in Commission costs, administrative permits generally require more staff time, and should be charged more. Therefore, in order to raise the fees, while maintaining low fees for filings that require minimal staff time, the range of fees is proposed to increase to \$250 for simple projects to \$250,000 for the largest, most complex projects. To distribute the fees based on relative Commission costs, while creating an overall revenue increase of 20% to 36%, the Commission increased some fees by a larger percentage than other fees.

The Commission has two major types of permits, administrative permits, and regular permits. Administrative permits generally do not receive special conditions, and regular permits generally do. Regular permits also generally have longer, more involved staff reports. There are also a number of procedural-type filings. These include: waivers, immaterial amendments, extensions, exemptions, continuances, and boundary determinations. These filings are generally handled at the staff level, and require limited input from technical and legal staff.

~~To establish appropriate fee amounts,~~ Commission staff ~~first~~ analyzed the complexity of applications that are received within each fee category. Fees for more complex applications are higher than fees for less complex applications. Elements of complexity that affect the proposed fee amounts include: the square footage of the proposed development; the total cost of development; the typical number of technical studies associated with the development; the typical number of special conditions associated with the average application; the time and expertise required to perform services applied for; and the impact of the development on coastal resources, which requires analysis under the Coastal Act.

Commission staff also conducted a survey of local governments which charge fees in the Coastal Zone for application review that is similar to the application review performed by the Commission. A detailed description of the survey can be found below in the section titled, "Technical Studies." A major difference between the planning fees of local governments and the Commission's filing fees is that the Commission's fees include the cost of environmental review, and local governments charge an additional fee for environmental review. Environmental review is a costly process that is often undertaken by consultants, which adds substantially to the cost of review. Nevertheless, this survey was used to ensure that the proposed fees are not excessive in comparison to those charged by local governments.

## **AMENDMENTS**

The following breaks the amendments down by subsection and describes the purpose and rationale for each of the proposed amendments.

### **13055(a)**

The proposed revision divides the filing fees into section (a) which addresses fees for coastal development permit applications and section (b) which addresses all other types of filings. The purpose of this revision is to make the regulations clear and easy to follow.

#### **13055(a)(1)**

The proposed revision raises the fee for an administrative permit from \$200 to \$2,500. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for administrative permits. The cost of processing administrative permits is limited because administrative permits do not generally carry special conditions. Special conditions increase Commission costs because they often involve the creation of site-specific mitigation which requires expertise from the Commission's technical and legal staff. Special conditions also increase costs because often, they must be monitored by staff before and after the permit is granted. In establishing new fee categories ~~and levels that achieve this objective~~, the Commission has used fees currently charged by local governments for similar development categories as guidance. The average local government fee for administrative permits found in the fee study was \$3,474. The Commission has proposed a lower fee because the cost of processing administrative permits is limited, as described above. The fee for administrative permits represents a baseline fee for the fee schedule because all regular permits must have higher fees, based, in part, on the fact that they are subject to special conditions. Procedural-type filings must have lower fees, because they require less staff time and expertise. Using \$2,500 as the baseline fee for administrative permits results in an estimated annual filing fee revenue which will meet the Commission's need to collect an increased portion of its annual regulatory costs through filing fees. As illustrated in Exhibit 1, "Estimated Filing Fees," the estimated filing fee revenue is \$2M to \$3.6M, which represents 20% to 36% of the Commission's estimated annual regulatory costs.

#### **13055(a)(2)(A)**

The proposed revision adds the phrase "For up to 4 detached, single-family residences the fee for each residence" so that fees for projects with 4 or fewer residences would be differentiated from fees for projects with more than 4 residences. The current regulations require each single-family residence in a development to be charged separately. However, the fee structure would cause the following problem: because there is a maximum fee in subsection (f) of \$100,000 for residential development, if the full fee was charged for each residence in a large development, then the developer of a project with 22 residences between 1,501 and 5,000 square feet would be charged the same fee as a developer of a project with 200 single family homes of the same size. Both would be charged the maximum fee of \$100,000. To minimize this discrepancy, a separate fee structure has been

included in section (a)(2)(B) for developments of more than four detached, single-family homes. Therefore, the purpose of the proposed revision is to ensure that developments which create larger impacts and require more analysis are charged a higher fee than developments which cause smaller impacts and require less analysis.

The proposed revision increases fees for up to 4 detached, single-family residences. The current fee for each home under 1,500 square feet is \$250 and the proposed fee is \$3,000. The fee for homes from 1,501 to 5,000 square feet is currently \$500 and the proposed fee is \$4,500. The fee for homes that are more than 5,001 square feet is currently \$1,000. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for single-family residences. The fee for homes begins at \$3,000 because the complexity of review for a small home is generally a step up in complexity compared to that required for an administrative permit. The fees for larger homes are larger, because the size of the development directly impacts coastal resources and the complexity of project review and analysis, which directly impact the Commission's costs. In establishing new fee categories and levels ~~that achieve this objective~~, the Commission has used fees currently charged by local governments for similar development categories as guidance.

The proposed revision adds fees for residences between 5,001 and 10,000 square feet and for residences larger than 10,001 square feet. The proposed fee for residences between 5,001 and 10,000 square feet is \$6,000 and the fee for residences over 10,001 square feet is \$7,500. The current regulations have one fee for all homes over 5,001 square feet. However, many new residences are 10,000 square feet or more, and it would be inappropriate to charge the same fee for residences between 5,001 and 10,000 square feet as for residences that are larger than 10,001 square feet, because larger homes cause more coastal impacts that need to be reviewed and considered. The purpose of the proposed revision is to update the Commission's fee structure to reflect current trends in land development and to ensure that developments which create larger impacts and require more analysis are charged a higher fee than developments which cause smaller impacts and require less analysis.

**13055(a)(2)(B)**

Currently, the regulations require each single-family house in a development to be charged separately. However, the fee structure would cause the following problem: because there is a maximum fee in subsection (f) of \$100,000 for residential development, if the full fee was charged for each residence in a large development, then the developer of a project with 22 residences between 1,501 and 5,000 square feet would be charged the same fee as a developer of a project with 200 single family homes of the same size. Both would be charged the maximum fee of \$100,000. To minimize this discrepancy, a separate fee structure has been included in section (a)(2)(B) for developments of more than four detached, single-family homes.

~~In subsection (a)(2)(B), a new fee structure is proposed for detached single family developments of more than four residences. For these applications, the fee is based on the size of the residences being built. For more than four residences of 1500 square feet or less, the fee is either \$15,000 or \$1,000 per residence, whichever is greater. For more than four residences between 1,501 and 5,000 square feet, the fee is either \$22,500 or \$1,500 per residence, whichever is greater. For more than four residences between 5,001 and 10,000 square feet the fee is either \$30,000 or \$2,000 per residence, whichever is greater. And for more than four residences of 10,001 square feet or more, the fee is \$37,500 or \$2,500 per residence, whichever is greater. For all residential development, there is a maximum fee of \$100,000. For developments with residences of different sizes, the fee will be based on the average size of all the residences.~~

Although the maximum fee of \$100,000 is higher than the local government average obtained in the survey, staff has determined that this is the appropriate fee. Each house in a large development has an impact on the environment, and large developments present new complications for infrastructure planning that are not created by the development of one new single-family residence. Also, \$100,000 is still a small portion of the total development cost. A hypothetical example might be a 100-unit detached single-family residential development, with homes of 3,000 square feet each. Assuming a construction cost of \$100 per square foot<sup>1</sup>, and no additional cost of infrastructure, the \$100,000 filing fee would represent only .33% of the total project cost.

**13055(a)(2)(C)**

The proposed revision adds a definition of square footage. The purpose of the revision is to clarify which structures in a development should be included in the square footage which is used to calculate the fee described in sections 13055(a)(2)(A) and 13055(a)(2)(B). The proposed definition includes all enclosed structures, regardless of their habitability because all structures cause coastal impacts which need to be reviewed by staff before issuing a permit. Currently, the regulations do not specify a method for calculating square feet, so the purpose of the proposed revision is to clarify ambiguities.

**13055(a)(3)**

The proposed revision moves the fee for lot line adjustments to subsection 13055(e) and deletes the phrase “for divisions of land where there are single family residences already built and only one new lot is created...” The purpose of moving the fee for lot line adjustments is because it is more appropriate to include lot line adjustments with subdivisions in subsection (e) than to keep it grouped with multi-family development as it was in subsection 13055(a)(3). The purpose of deleting the phrase “for divisions of land where there are single family residences already built and only one new lot is created...” is that the circumstance this describes is infrequent and would be categorized as a subdivision and charged accordingly.

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<sup>1</sup> Estimate based on the International Code Council’s 2006 Building Valuation Data.

**13055(a)(3)(A)**

The proposed revision rewords the subsection for clarification. The purpose of this revision is to create regulations which are clear and easy to follow.

The proposed revision increases the fee for up to 4 multi-family residential units from \$600 to \$7,500. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for multi-family residences. The fee is \$7,500 because that is the fee for new residences of 10,000 square feet. Multi-family developments with 4 or fewer units generally require staff costs that are equal to staff costs for 10,000 square foot residences because they are generally associated with a similar size development. The size of the development directly impacts coastal resources and the complexity of project review and analysis, which directly impact the Commission's costs. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(a)(3)(B)**

The proposed revision rewords the subsection for clarification. The purpose of this revision is to create regulations which are clear and easy to follow.

The proposed revision increases the fee for more than 4 multi-family residential units from a minimum of \$2,000 to a minimum of \$10,000, increases the fee per unit from \$120 to \$750, and increases the maximum fee from \$20,000 to \$50,000. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for multi-family residences. The maximum fee is half the amount of the maximum fee for single-family development because multi-family development is generally far smaller in square footage than single-family development. The size of the development directly impacts coastal resources and the complexity of project review and analysis, which directly impact the Commission's costs. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(a)(4)**

The regulations currently require a \$200 fee for residential projects that include more than 75 cubic yards of grading. The proposed amendments would change this in four ways. First, the grading fee would apply to all projects, not just residential. Second, the cutoff of 75 cubic yards that triggers an additional fee would be lowered to 50 cubic yards. Third, the fee structure would include five increments of grading amounts. And fourth, the fee would be raised. The new fees are proposed as follows<sup>2</sup>:

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<sup>2</sup> In the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission increased the fees for projects that include more than 100 cubic yards of grading. The reason for the increase is that the originally proposed fees were not high enough to reflect the complexity of review involved in grading projects, which substantially disturb coastal resources.



Cubic Yards of Grading	Proposed Fee
51 to 100	\$500
101 to 1000	<del>\$750</del> <u>\$1000</u>
1001 to 10,000	<del>\$1,000</del> <u>\$2000</u>
10,001 to 100,000	<del>\$1,250</del> <u>\$3000</u>
100,001 <del>or more</del> <u>to 200,000</u>	<del>\$1,500</del> <u>\$5000</u>
<u>200,001 or more</u>	<u>\$10,000</u>

The grading fee was first added to the regulations in 1991 to cover the cost of the additional time necessary to review the impacts of large amounts of grading. The 1991 fee schedule also included a \$5 fee for every additional 1,000 cubic yards of grading, but this additional fee was removed in 1998 because it was considered to be too small to warrant the calculation. However, an increased fee for more grading is appropriate because more grading causes more impacts and requires more review. The Commission is proposing to use the grading fee schedule put forth in the Uniform Building Code (UBC) and to apply it to all types of projects, not just residential projects. The UBC schedule will add more cubic yard increments, so that large amounts of grading will be charged a larger fee than small amounts of grading. The purpose of this revision is to create a fee structure which reflects the additional time required to review larger amounts of grading and the associated disturbances. Large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources. As grading increases, the complexity of project analysis review and the number and complexity of special conditions increases, therefore the fee schedule generally increases at increasing rates.

**13055(a)(5)**

The proposed regulations are amended so that when calculating the fee for commercial and industrial developments, the fee will be based upon either the gross square footage or the development cost, whichever is greater.

The proposed fees are as follows:

**Fees based upon gross square footage**

Square Footage	Current Fee	Proposed Fee
1000 or less	\$500	\$5,000
1001 to 10,000	\$2,000	\$10,000
10,001 to 25,000	\$4,000	\$15,000
25,001 to 50,000	\$8,000	\$20,000
50,001 to 100,000	\$12,000	\$30,000
100,001 or more	\$20,000	\$50,000

**Fees based upon development cost<sup>3</sup>**

Current Development Cost Categories	Current Fee	Proposed Fee
<del>\$100,000</del> \$50,000 or less	N/A	\$3,000
<del>\$50,001 to</del> \$100,000 to \$500,000	\$600	\$6,000
<del>\$100,001 to \$500,000</del> \$500,001 to \$2,000,000	\$2,000	\$10,000
<del>\$500,001 to \$1,250,000</del> \$2,000,001 to \$5,000,000	\$4,000	\$20,000
<del>\$1,250,001 to \$2,500,000</del> \$5,000,001 to \$10,000,000	\$8,000	\$25,000
<del>\$2,500,001 to \$5,000,000</del> \$10,000,001 to \$25,000,000	\$12,000	\$30,000
<del>\$5,000,001 to \$10,000,000</del> \$25,000,001 to \$50,000,000	\$20,000	\$50,000
<del>\$10,000,001 to \$100,000,000</del> \$50,000,001 to \$100,000,000	N/A	\$100,000
<del>\$100,000,001 or more</del> \$100,000,001 or more	N/A	\$250,000

The proposed revision adds new fee categories for projects with a development cost of less than \$50,000, between \$10,000,001 and \$100,000,000, and more than \$100,000,001. The purpose of the new fee for projects less than \$50,000 is to create a smaller fee for small projects. The purpose for new fee categories more than \$5,000,001 is that project costs have increased substantially since the regulations were amended in 1991. At that time, a project with a development cost of over \$5,000,000 may have been a very large project. However, today a \$5,000,000 project may be small, and a large project may cost more than \$100,000,000 to develop. The current regulations charge the same fee for a \$5,000,000 project as for a \$100,000,000 project. The proposed revision would ensure that larger projects are charged larger fees.

The proposed revision increases the fee in each category. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for commercial and industrial applications. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

Currently, commercial and industrial developments are charged either by the total square feet of development or by the total development cost of the project. However, there is no indication in the current regulations as to how to choose between the two different methods

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<sup>3</sup> Because the Commission's fee schedule was last updated in 1991, it was based on outdated development costs. Therefore, in the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission approved an updated fee schedule for development cost that is more proportionate to the fee schedule which is based on square footage.

of calculating the filing fee. To clarify this, the proposed regulations require the higher of the two fees be charged.

Also, the term “development cost” is used in the current regulations but is not defined. To make the regulations clear and easy to follow, the following definition of “development cost” has been proposed:

“all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission’s jurisdiction.”

This is the same definition that is used by the San Francisco Bay Conservation and Development Commission.

The proposed revision includes “all other development not identified in this section.” The purpose of including this statement is that some projects, such as residential remodels, cannot be charged a fee based on square footage, and the regulations do not provide an alternative fee schedule for such projects. The proposed revision would cause such projects to be charged according to the total development cost of the project. However, it is often the case that small residential projects are issued waivers, which have a proposed fee of \$500, or administrative permits, which have a proposed fee of \$2,500.

Major energy facilities are currently charged a flat fee of \$20,000. The Commission considered proposing a higher flat fee as a part of this regulation update. However, a flat fee for energy facilities may not be appropriate given the wide range of energy projects that are expected to be developed in the future. New alternative energy facilities could potentially be far smaller in scope than traditional petroleum facilities. Therefore, the proposed regulations require energy facilities be treated as any other industrial development. The purpose of this revision is to ensure that small energy projects are charged a smaller filing fee than large energy projects.

**13055(a)(6)**

The proposed revision increases the fee for immaterial amendments from \$200 to \$1,000. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing amendments. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance. The fee is \$1,000 because it is a procedural-type filing and therefore must be less than the \$2,500 administrative permit, but because all amendments require a review of the existing permit and site conditions, it generally requires more staff time than a waiver.

**13055(a)(7)**

The proposed revision increases the fee for emergency permits from \$200 to \$1,000. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for emergency permits. The fee of \$1,000 represents a deposit only; Applicants that are granted emergency permits are required to return to the Commission for a regular permit, and at that time, they are required to pay the regular permit fee, less the \$1,000 emergency permit fee. The Commission does not charge an additional fee for the expedited review involved with emergency permits, recognizing that emergency permits are generally applied for after natural disasters. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(a)(11) through (a)(14)**

The proposed revision moves these regulations to subsection (b). The purpose of this revision is to make the regulations clear and easy to follow by dividing them into two distinct categories: fees for coastal development permit applications and fees for all other filings.

**13055(a)(8)**

The proposed revision increases the fee for temporary permits from \$500 to \$2,500. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for temporary permits. The impacts of temporary permits are limited by the fact that they are temporary in nature, and, only a portion of the Coastal Act's policies govern temporary impacts. Temporary permits generally require the same level of time and expertise required for administrative permits, so they have the same fee. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(b)**

The proposed revision creates subsection (b) which only addresses filings other than coastal development permit applications. The purpose of the revision is to make the regulations more clear and easy to follow.

**13055(b)(1)**

The proposed revision moves the fees for extensions and reconsiderations from subsection (a) to subsection (b). The purpose of the revision is to include these fees in the subsection which addresses filings other than coastal development permit applications in order to make the regulations clear and easy to follow.

The proposed revision increases the fees for extensions and reconsiderations from \$200 to \$500 for single-family dwellings, and from \$500 to \$1,000 for all other development types. The purpose of this increase is to establish a fee that is based on a portion of the average

costs that the Commission incurs in processing applications for extensions and reconsiderations. Extensions and reconsiderations require staff and the Commission to review the proposed project as well as existing conditions. The fee is \$500 for single-family dwellings because this review is similar to the review required for a waiver. The fee for other projects is \$1,000 because non-residential projects are generally more complex, and because the Commission would like to continue its practice of having lower fees for residential development. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(b)(2)**

The proposed revision moves the fee for waivers from subsection (a) to subsection (b). The purpose of the revision is to include this fee in the subsection which addresses filings other than coastal development permit applications in order to make the regulations clear and easy to follow.

The proposed revision increases the fee for waivers from \$200 to \$500. The purpose of this increase is to establish fees that are based on a portion of the average costs that the Commission incurs in processing waivers. The cost of processing waivers is minimized by the fact that the Commission generally produces a one page description of the project, not a staff report, and, waivers are generally not reviewed by technical staff.

**13055(b)(3)**

The proposed revision adds a new fee for written exemptions. Written exemptions are often requested by project applicants who are unsure if they need a Coastal Commission permit before starting their project. Exemptions often require many hours of staff research. Generally, exemptions require the same amount of Commission costs as boundary determinations, and were therefore assigned the same fee of \$250. Written permit exemptions require less complex review than waivers, which are assigned a fee of \$500. ~~Therefore,~~ The purpose of the revision is to add a fee for a service provided by staff which is commensurate with the amount of work necessary to complete the task.

**13055(b)(4)**

The proposed revision moves the fee for continuances from subsection (a) to subsection (b). The purpose of the revision is to include this fee in the subsection which addresses filings other than coastal development permit applications in order to make the regulations clear and easy to follow.

The proposed revision increases the fee for continuances from \$100 to \$1,000. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for extensions and reconsiderations. Continuances granted at the request of the applicant benefit the applicant by allowing them additional time to respond to the Commission. Continuances take staff and Commission time by delaying Commission action and requiring re-publication of extensive written

reports and re-scheduling of the public hearing. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance.

**13055(b)(5)**

The proposed revision assigns the same filing fees for consistency certifications and for certain appeals that are charged for coastal development permit applications according to subsection (a). The purpose of the revision is to charge the same fees for these items as for coastal development permit applications because they require the same level of review.

**13055(b)(5)(A)**

The proposed revision adds a filing fee for consistency certifications. The federal regulations which authorize the Commission to require consistency certifications, 15 CFR Part 930, Subparts D and E, are silent with regard to the charging of filing fees by states for consistency certifications. The purpose of the revision is to ensure the Commission is receiving fees for all of the filings it is legally able to charge fees for. It is not possible for the Commission to charge fees for public agency applications or for local coastal program amendments.

**13055(b)(5)(B)**

The proposed revision adds a filing fee for appeals which are denied at the local level. The proposed revision will apply to only a very small percentage of appeals. The purpose of the revision is to charge a fee only for appeals in which the applicant is requesting additional review from the Commission.

**13055(b)(6)**

The proposed revision adds a filing fee for requests for boundary determinations. Currently, there is no fee for boundary determinations. Mapping staff regularly performs these determinations which can be quite complex, require written notice and take many hours of staff time to perform. The proposed fee for boundary determinations is \$250. The fee is \$250 because boundary determinations generally require similar costs as permit exemptions, and generally require a less complex review process than waivers. The purpose of the revision is to ensure the Commission is receiving fees for all of the filings it is legally able to charge fees for. It is not possible for the Commission to charge fees for public agency applications or for local coastal program amendments.

**13055(b)(7)**

The proposed revision amends the filing fee for boundary adjustments. It moves the fee from Section 13255 and establishes one fee for boundary adjustments. The Commission may adjust the boundary of the Coastal Zone pursuant to Coastal Act section 30103(b). Boundary adjustments require staff reports and review by the Commission, and they generally require a level of review similar to that required for reviewing a new house. Therefore, a fee of \$5,000 for boundary adjustments has been proposed. The current fee regulation found in 13255.2 has not been updated since the Commission's first regulations

were adopted in 1973, and the fee structure is based on the size of the parcel that will be affected by the adjustment. However, the Commission staff has determined that the time it takes to review a boundary adjustment has little relationship with the size of the parcel. Therefore, the Commission is proposing only one fee.

**13055(c)**

The proposed amendment adds an automatic fee escalator to the Commission's fee regulations. This fee escalator will allow the Commission to adjust its fees each year by the amount of inflation determined by the California Consumer Price Index. It states that each year, the new fees as adjusted by the California Consumer Price Index will become effective July 1. The Commission will calculate the new fees after the Department of Industrial Relations publishes the annual index value, and then will adjust the fee schedule that is issued to the public and posted on the Commission's website. The purpose of this automatic escalator is to ensure that filing fees are increasing at least at the rate of inflation, and that future fee increases will not be as substantial as the current one.

**13055(d)**

Subsection (d) is for after-the-fact (ATF) permits. ATF permits enable the Commission to authorize development that has been completed without a permit, when that development can be found to be consistent with the Coastal Act. The proposed fee for ATF permits is five times the normal fee. Local governments in the Coastal Zone charge from 2 to 9 times the regular filing fee for ATF permit authorization. This is because ATF permits require more review than normal permits. Often, more site visits than usual are required to analyze the site as it would have been before the unpermitted development occurred. It is far more difficult to assess environmental impacts and to devise conditions for mitigating environmental impacts after development has occurred. To ensure that the few ATF permits that do not require substantial staff time are not overcharged, the proposed regulations allow the executive director to reduce the ATF filing fee when appropriate. However, the fee would never be allowed to be less than two times the regular filing fee.

The proposed regulations also clarify that the ATF fee is only charged for the portion of the application which has been developed without a permit. This is important because applicants often request ATF approval of development at the same time that they apply for a larger development. For example, an already completed well might be applied for at the same time that an applicant applies for a permit to build a house. In this circumstance, the proposed regulations would require ATF fees only for the portion of the project that was carried out without a permit.

**13055(e)**

Under the Commission's current regulations, if an applicant requests a permit for a subdivision and construction of residences, the applicant is only charged the fee for review of the residences. This exemption from the fee for subdivision review is inconsistent with the staff time required to review the two elements of the project. A subdivision requires

Commission and staff review time, regardless of when the residences are built. The proposed subsection (e) removes the exemption from subdivision fees when an applicant proposes both subdivision and construction of residences.

The existing regulations have the fee for subdivisions equal to the fee for single family residences, so that each new lot created by a subdivision is charged the same fee as a single family residence. However, the current regulations have three different fees for three different sizes of residences, and the regulation regarding subdivisions does not say which fee should be applied. To clarify this, the proposed revisions set forth a \$3,000 fee for each of the first four lots, and ~~\$500~~ \$1,000<sup>4</sup> for each additional lot. The fee of \$3,000 was chosen because it is the proposed fee for the smallest house on the fee schedule. The fee was reduced to ~~\$500~~ \$1,000 for each lot over 4 lots because the level of review required for 20 lots, is generally less than 20 times that required for the review of 1 lot.

The proposed revision includes filing fees for conditional certificates of compliance in subsection (e). Conditional certificates of compliance legalize lots that were subdivided in a manner that did not conform to legal requirements that were applicable to that subdivision at the time it occurred. The purpose of this revision is that conditional certificates of compliance require a similar level of review as for an application for a new subdivision.

The fee for lot line adjustments is currently \$600, and the amended fee is proposed to be \$3,000. This is the same fee as is proposed for the creation of one new lot through a subdivision. This is an appropriate fee because the Commission and staff must review the impacts of the new configuration of two lots on the development potential or existing development and also on the surrounding development.

#### **13055(f)**

The existing regulations require applicants to pay separate fees for different types of development, even if they are included in one application. The proposed amendments do not revise this. However, the current maximum fee is \$20,000, which is also the highest current fee for any fee category. The proposed revision raises the maximum fee to the highest proposed fee for any one fee category: \$250,000. The proposed revision also limits the fees for residential development, so that the maximum fee is \$100,000.

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<sup>4</sup> The originally proposed fee for subdivisions was \$3,000 for each of the first four lots and \$500 for each additional lot. In the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission approved an additional increase so that the revised fee is \$3,000 for each of the first four lots and \$1,000 for each additional lot. The reason for this revision is that the originally proposed fee of \$500 for each lot over four lots was too low as compared to the average complexity of this type of application review. This revision is in section 13055(e) and can be found on page 5 of Exhibit A.



**13055(g)**

The proposed revision deletes the words “in consideration of” and replaces them with “processing”, to clarify the language and make it consistent with the language of section 30260(c)(1) of the Coastal Act.

In the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission approved additional language in section 13055(g) that would exempt applicants for single-family homes from indemnification conditions. This exemption would not increase fees; it would prevent the Commission from requiring some applicants to reimburse its attorney’s fees. The proposed revision is shown in double underline on page 5 of Exhibit A, and adds the following sentence to section 13055(g):

“Notwithstanding the foregoing, the commission shall not require an applicant for a permit for one single-family dwelling to reimburse it for litigation costs or fees that the commission may incur in defending a judicial challenge to the commission’s approval of the permit.”

**13055(h)**

Subsection (h)(1) is an existing regulation which allows the Commission to reduce fees where they feel it is necessary or appropriate.

In subsection (h)(2), the proposed revision reduces the fee for certain affordable housing developments. The purpose of this revision is to encourage affordable housing in the Coastal Zone.

Government Code section 65915 and Government Code section 65590 require local governments to provide density bonuses and other incentives for the construction of affordable housing. Several local governments in the Coastal Zone, including County of Marin, City/County of San Francisco, County of San Mateo and the City of San Diego, now offer the option of deferred or reduced filing fees for affordable housing.

The Coastal Act also addresses the need to encourage affordable housing. Section 30604(g) of the Coastal Act states:

*“The Legislature finds and declares that it is important for the Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.”*

The Commission has revised subsection 13055(h)(2) to improve clarity. The revisions are described in the 15-Day Notice of Revisions prepared for the comment period beginning January 23, 2008. The final text of the regulations is attached in Exhibit A.

In subsection (h)(3), the proposed revision reduces the fee for green building. Coastal Act section 30253 requires new development to minimize energy consumption. Green

buildings can significantly reduce the energy required to construct and operate commercial, industrial and residential buildings. The energy reduction can come from using sustainable building materials, incorporating development with public transportation, designing more efficient heating and cooling, and designing buildings that utilize efficient lighting.

Reducing fees for green buildings is a powerful incentive the Commission can utilize to encourage new development to go beyond the requirements of the Coastal Act in energy conservation.

The Commission has revised subsection 13055(h)(3) to improve clarity. The revisions are described in the 15-Day Notice of Revisions prepared for the comment period beginning January 23, 2008. The final text of the regulations is attached in Exhibit A.

### **13055(i)**

The current regulations have a subsection which addresses a situation in which the applicant pays for an administrative permit, but then the project, or project circumstances, changes in a way that requires a regular permit. In this situation, the regulations require the applicant to either pay the regular filing fee before the public hearing, or prior to the issuance of the permit.

The proposed revision expands this section to require applicants to pay the filing fee of the final project application that is reviewed. If a project changes so that the fee would be larger, then an increased fee would be charged. And if a project changed so that the fee would be smaller, then a refund would be given, but only in circumstances where staff has not already performed substantial work on the initial application.

For example, if an applicant is proposing to subdivide a property into 3 lots and build 3 homes, but then changes the project to subdivide the property into 5 lots with 5 homes, then the applicant would be required to pay the fee necessary for the review of 5 lots with 5 homes. If, however, the applicant initially proposed to subdivide the property into 5 lots with 5 homes, but decided very early on in the review process to subdivide the property into 3 lots with 3 homes, a refund would be given. If the applicant were to reduce the scope of the project late in the review process, or after the staff report was written, they would not be eligible for a refund.

The purpose of this revision is to ensure that the Commission's fees are directly related to the amount of Commission and staff time required to review the associated filings.

### **13111**

In the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission added a reference to the proposed fee for appeals in section 13111(b). The purpose of this revision is to ensure the regulations are internally consistent, in light of the proposed amendments. The revision will simply clarify the

regulations, so that someone reading section 13111 will be aware of the associated fees. The revision is shown on page 1 of Exhibit B and below:

“For an appeal to the Commission by an applicant pursuant to Public Resources Code sections 30602 or 30603(a)(5) of a denial of a coastal development permit application, the applicant shall submit a filing fee in accordance with the provisions of section 13055(b)(5)(B).”

#### **13169(d)(1)**

Section 13169 of the Commission’s regulations describes permit extensions. Permit extensions can be requested by applicants that have not begun their project before the original permit’s expiration. Often, it is found that there have not been changed circumstances, and a permit extension can be granted. However, when changed circumstances are found by the Commission, the applicant is required to submit additional information regarding the changed circumstances, and then a de novo review of the permit is performed.

The current regulations do not require the applicant to pay a filing fee when changed circumstances have been found. However, the current application form conflicts with this, and does require payment of a fee when changed circumstances have been found. The time it takes to perform a de novo review of a permit under changed circumstances is similar to the time and effort it takes to review a new application. Therefore, the proposed revision amends section 13169 to require submittal of the appropriate filing fee before the de novo review, as called for in the current application form. The purpose of this revision is to ensure that the Commission’s fees are directly related to the amount of Commission and staff time required to review the associated filings.

#### **13255.0**

The proposed revision adds boundary determination requests to this section, which previously applied only to boundary adjustments. The purpose of this revision is to add boundary determinations request to the regulations. Previously, boundary determinations were performed by staff, but they were not detailed in the regulations.

#### **13255.1**

The proposed revision makes reference to the fee for boundary determinations put forth in section 13055(b)(6). The purpose of the revision is to ensure the regulation regarding boundary determinations is clear and references the appropriate fee.

#### **13255.2(d)**

The proposed revision moves the fees for boundary adjustments from this subsection to subsection 13055(b)(7). The reason for this revision is to put all fees in the fees section 13055, so that the regulations are clear and easy to follow.

**13576(c)**

Section 13576 applies to maps created after Local Coastal Program certification that show adopted boundaries. This section also applies to the process for revising and interpreting boundary determinations. The proposed revision adds a new subsection to 13576. The new subsection (c) would require a fee for interpretation or revision of boundaries on post-certification maps, and a fee for determining the location of a parcel in relation to the boundaries shown on the map. The purpose of this revision is to ensure that the Commission's fees are directly related to the amount of Commission and staff time required to review the associated filings.

**TECHNICAL STUDIES**

The Commission has determined that its filing fees should be updated so that they are not excessive in comparison to those charged by local governments in the coastal zone. To aid in the determination of fees that are typical in the coastal zone, staff performed a full comparison between the Commission's current fees and the planning fees of the following five local agencies: County of Sonoma, County of San Mateo, County of Santa Barbara, City of Huntington Beach and City of Oxnard. These particular local governments were chosen for three main reasons: their fee categories are relatively similar to the Commission's; the majority of their fees are flat fees, not fees based on cost recovery; and, they represent both rural and urban areas of the Coastal Zone.

The survey of local governments was relied on to develop a general idea of what planning fees are in the coastal zone. A direct comparison of the fees was impossible because different agencies have different fee categories, and because services for each category are grouped into the fees in different ways. For example, the County of San Mateo charges separate fees for design review and water quality review, but these services are included within the Commission's current fees. To resolve this conflict, staff obtained a minimum and maximum fee from each of the five agencies for each of the Commission's fee categories. Then, the mean average of the minimum and maximum fees for each category was calculated. Staff also conducted interviews with staff members from each of the agencies surveyed to ensure correct interpretation of the fee schedules.

It is important to note that the fee comparison did not include the local governments' fees for environmental review, and therefore portray the local government review fees below what they actually are. Because local governments are generally the CEQA lead agency, they charge fees for the preparation of CEQA documents. These fees are substantial, and are often charged on a cost recovery basis. Although the Commission is often a responsible agency, not the lead agency, it still performs an in-depth review of the lead agency's document.

In some cases, often with seawalls and piers, the Commission does act as the CEQA lead agency and prepares functionally equivalent documents, pursuant to the certification that the Secretary of Resources has granted to the Commission pursuant to section 21080.5 of the CEQA.

However, these applications are not charged an additional fee on the basis of the Commission's status as lead agency. Instead, the CEQA review service is included in the normal fee.

## **ALTERNATIVES**

The Commission has considered four alternatives to the proposed regulations. The first alternative is to make no changes to the regulations. The second is to increase the existing fees according to the inflation that has occurred since they were established in 1991. The third alternative is to increase the existing fees by 8, as was done in the most recent fee increase which took place in 1991. And the final alternative considered by the Commission is to charge fees based on a cost recovery system.

The first alternative is to make no changes to the regulations. However, the fees the Commission currently charges applicants are low and cover only a very small portion of the costs for the Commission's regulatory program. The Commission's filing fees have not been raised since 1991 and they are substantially lower than the fees charged by local governments with certified LCPs.

The second alternative is to increase the existing fees according to the inflation that has occurred since they were established in 1991. However, an increase based on inflation is not sufficient to address the time and effort it takes to review projects in the current environment. The change in inflation from 1991 to 2006, calculated using the California Consumer Price Index, is approximately a multiplier of 1.5.<sup>5</sup>

The third alternative is to increase the existing fees by 8, as was done in the last fee increase which took place in 1991. However, if the Commission were to apply this increase, some fees would be disproportionate to the time spent by staff to review the applications, and some fees would be disproportionate to each other. For example, the fee for a 12,000 square foot commercial building would be \$16,000 more than the fee for an 8,000 square foot commercial building.

The final alternative is to charge fees based on a cost recovery system. Many government agencies charge filing fees based on cost recovery. In these agencies, all staff involved in the review of a project track the time spent on each filing, and the applicant is charged accordingly. Cost recovery systems cause more complicated applications to be charged more, and less complicated applications to be charged less. However, a drawback of cost recovery systems is that the cost of staff review to the applicant is difficult to predict. A full cost recovery system would result in much higher fees to applicants. Therefore, flat fees are the most predictable and most fair to the applicant.

Also, the Commission's current staff structure could not support a cost recovery system. It is time consuming for analysts to track their time, it would require additional staff in the accounting

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<sup>5</sup> The 2006 Annual California Consumer Price Index value was 210.5. The 1991 Annual California Consumer Price Index value was 140.6. Change in inflation from 1991 to 2006 is  $210.5/140.6 = 1.497$

department, and it may result in applicants disputing the amount of time spent analyzing their applications.

### **SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

The proposed amendments will not have a significant impact on business, or impair the ability of California businesses to compete with businesses in other states. This is because only a very small percentage of businesses in the Coastal Zone are required to pay the Commission's filing fees. These are the businesses which voluntarily elect to undertake development in the coastal zone and as a result, submit permit applications and other filings to the Commission.

Additionally, once a local government has coastal permitting authority to issue permits within their jurisdiction, businesses will then apply for a coastal development permit from their local government. Also, these businesses are only required to pay a one time fee, typically at the time of development, which is a very small percentage of the project's total development cost.

Furthermore, the Commission's proposed fees are not excessive in comparison to those charged by local governments which issue coastal development permits in the Coastal Zone.

### **COMPARABLE FEDERAL REGULATIONS**

There are no existing comparable federal regulations or statutes.

**ESTIMATED FILING FEES  
FY 2006/07 TO FY 2008/09**

	(A)	(B)	(C)	MODEL YEAR		(A)	(A)	(A)	(B)	(C)	(A)	(B)	(C)			
	Current	Proposed	Proposed			Estimated	Proj Current	Proj MIN	Proj MAX	Proj Current	Proj MIN	Proj MAX				
	Fees	Fees (Min)	Fees (Max)	FY 2005/06	Percent <sup>3</sup>	FY 2006/07	Revenues	FY 2007/08	Revenues	Revenues <sup>4</sup>	Revenues <sup>4</sup>	FY 2008/09	Revenues	Revenues	Revenues	
Total Applications with Associated Revenue <sup>1</sup>				956		857		910				910				
Total Number of Fees Assessed <sup>2</sup>				1,342		1,203		1,277				1,277				
Breakdown of Fees Categories:																
1	Waiver	\$200	\$500	\$500	333	24.81%	299	\$59,703	317	\$63,395	\$110,942	\$110,942	317	\$63,395	\$158,488	\$158,488
2	Administrative Permit	\$200	\$2,500	\$2,500	78	5.81%	70	\$13,985	74	\$14,849	\$100,233	\$100,233	74	\$14,849	\$185,617	\$185,617
3	Up to 4 SFRs <1,500 sq. feet	\$250	\$3,000	\$12,000	18	1.34%	16	\$4,034	17	\$4,283	\$27,843	\$104,945	17	\$4,283	\$51,402	\$205,607
4	Up to 4 SFRs 1,501<5,000 sq. feet	\$500	\$4,500	\$18,000	71	5.29%	64	\$31,824	68	\$33,792	\$168,959	\$625,149	68	\$33,792	\$304,127	\$1,216,506
5	Up to 4 SFRs 5,001<10,000 sq. feet	\$1,000	\$6,000	\$24,000	22	1.64%	20	\$19,722	21	\$20,941	\$73,295	\$261,768	21	\$20,941	\$125,649	\$502,594
6	Up to 4 SFRs >10,001 sq. feet	\$1,000	\$7,500	\$30,000	5	0.37%	4	\$4,482	5	\$4,759	\$20,228	\$73,771	5	\$4,759	\$35,696	\$142,782
7	5 or more SFRs average <1,500 sq. feet	\$250	\$15,000	\$15,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
8	5 or more SFRs average 1,501<5,000 sq. feet	\$500	\$22,500	\$22,500	1	0.07%	1	\$448	1	\$476	\$10,947	\$10,947	1	\$476	\$21,417	\$21,417
9	5 or more SFRs average 5,001<10,000 sq. feet	\$1,000	\$30,000	\$30,000	1	0.07%	1	\$896	1	\$952	\$14,754	\$14,754	1	\$952	\$28,556	\$28,556
10	5 or more SFRs average >10,001 sq. feet	\$1,000	\$37,500	\$37,500	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
11	Attached Residential up to 4 units	\$600	\$7,500	\$7,500	16	1.19%	14	\$8,606	15	\$9,138	\$61,682	\$61,682	15	\$9,138	\$114,226	\$114,226
12	More than 4 Attached Residential units	\$2,000	\$10,000	\$10,000	1	0.07%	1	\$1,793	1	\$1,904	\$5,711	\$5,711	1	\$1,904	\$9,519	\$9,519
13	Subdivisions	\$1,000	\$3,000	\$12,000	11	0.82%	10	\$9,861	10	\$10,471	\$20,941	\$68,060	10	\$10,471	\$31,412	\$125,649
14	Grading 51<100 c.y.	\$250	\$500	\$500	2	0.15%	2	\$448	2	\$476	\$714	\$714	2	\$476	\$952	\$952
15	Grading 101<1000 c.y.	\$200	\$1,000	\$1,000	25	1.86%	22	\$4,482	24	\$4,759	\$14,278	\$14,278	24	\$4,759	\$23,797	\$23,797
16	Grading 1,001<10,000 c.y.	\$200	\$2,000	\$2,000	13	0.97%	12	\$2,331	12	\$2,475	\$13,612	\$13,612	12	\$2,475	\$24,749	\$24,749
17	Grading 10,001<100,000 c.y.	\$200	\$3,000	\$3,000	4	0.30%	4	\$717	4	\$762	\$6,092	\$6,092	4	\$762	\$11,423	\$11,423
18	Grading >100,001 c.y.	\$200	\$5,000	\$5,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
19	Commercial/Industrial <1,000 sq. feet	\$500	\$5,000	\$5,000	1	0.07%	1	\$448	1	\$476	\$2,618	\$2,618	1	\$476	\$4,759	\$4,759
20	Commercial/Industrial 1,001<10,000 sq. feet	\$2,000	\$10,000	\$10,000	8	0.60%	7	\$14,343	8	\$15,230	\$45,690	\$45,690	8	\$15,230	\$76,151	\$76,151
21	Commercial/Industrial 10,001<25,000 sq. feet	\$4,000	\$15,000	\$15,000	3	0.22%	3	\$10,757	3	\$11,423	\$27,129	\$27,129	3	\$11,423	\$42,835	\$42,835
22	Commercial/Industrial 25,001<50,000 sq. feet	\$8,000	\$20,000	\$20,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
23	Commercial/Industrial 50,001<100,000 sq. feet	\$12,000	\$30,000	\$30,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
24	Commercial/Industrial >100,001 sq. feet	\$20,000	\$50,000	\$50,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
25	Commercial/Industrial <\$100,000	\$600	\$3,000	\$3,000	95	7.08%	85	\$51,097	90	\$54,257	\$162,772	\$162,772	90	\$54,257	\$271,287	\$271,287
26	Commercial/Industrial \$100,001<\$500,000	\$600	\$6,000	\$6,000	9	0.67%	8	\$4,841	9	\$5,140	\$28,271	\$28,271	9	\$5,140	\$51,402	\$51,402
27	Commercial/Industrial \$500,001<\$2,000,000	\$2,000	\$10,000	\$10,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
28	Commercial/Industrial \$2,000,001<\$5,000,000	\$4,000	\$20,000	\$20,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
29	Commercial/Industrial \$5,000,001<\$10,000,000	\$8,000	\$25,000	\$25,000	1	0.07%	1	\$7,172	1	\$7,615	\$15,706	\$15,706	1	\$7,615	\$23,797	\$23,797
30	Commercial/Industrial \$10,000,001<\$25,000,000	\$12,000	\$30,000	\$30,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
31	Commercial/Industrial \$25,000,001<\$50,000,000	\$20,000	\$50,000	\$50,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
32	Commercial/Industrial \$50,000,001<\$100,000,000	\$20,000	\$100,000	\$100,000	1	0.07%	1	\$17,929	1	\$19,038	\$57,113	\$57,113	1	\$19,038	\$95,188	\$95,188
33	Commercial/Industrial >\$100,000,000	\$20,000	\$250,000	\$250,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
34	Emergency permit	\$200	\$1,000	\$1,000	20	1.49%	18	\$3,586	19	\$3,808	\$11,423	\$11,423	19	\$3,808	\$19,038	\$19,038
35	Immaterial amendment	\$200	\$1,000	\$1,000	40	2.98%	36	\$7,172	38	\$7,615	\$22,845	\$22,845	38	\$7,615	\$38,075	\$38,075
36	Material amendment <sup>5</sup>	50% Initial Fee	50% Initial Fee	50% Initial Fee	56	4.17%	50		53				53			
37	Extension/Reconsideration: single-family residences	\$200	\$500	\$500	69	5.14%	62	\$12,371	66	\$13,136	\$22,988	\$22,988	66	\$13,136	\$32,840	\$32,840
38	Extension/Reconsideration: all other developments	\$400	\$1,000	\$1,000	42	3.13%	38	\$15,060	40	\$15,992	\$27,985	\$27,985	40	\$15,992	\$39,979	\$39,979
39	Temporary Events	\$500	\$2,500	\$2,500	2	0.15%	2	\$896	2	\$952	\$2,856	\$2,856	2	\$952	\$4,759	\$4,759
40	Permit Exemption	\$0	\$250	\$250	372	27.72%	333	\$0	354	\$0	\$44,263	\$44,263	354	\$0	\$88,525	\$88,525
41	Continuance	\$100	\$1,000	\$1,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
42	Boundary Determination	\$0	\$250	\$250	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
43	Boundary Adjustment	\$250	\$5,000	\$5,000	-	0.00%	-	\$0	-	\$0	\$0	\$0	-	\$0	\$0	\$0
44	After the Fact <sup>3</sup>	200% Total Fees	500% Total Fees	500% Total Fees	16	1.19%	14		15				15			
45	Lot Line Adjustment	\$600	\$3,000	\$3,000	6	0.45%	5	\$3,227	6	\$3,427	\$10,280	\$10,280	6	\$3,427	\$17,134	\$17,134
TOTAL				1,342	100.00%	1,203	\$312,231	1,277	\$331,541	\$1,132,169	\$1,954,596	1,277	\$331,541	\$1,932,798	\$3,577,652	

1/ Not all applications are assessed a fee; Applications from public agencies, and applications for appeals and LCP amendments are exempted from paying fees and are not included in this chart.

2/ Two or more fees can be assessed on one application. Based on FY 2005/06, one application has a 40% chance of being assessed more than one fee.

3/ Percentages derived from Model Year FY 2005/06 are used to project the fee count in subsequent years.

4/ FY 2007/08 projected revenues assumes that proposed new fees are effective 01/01/2008 resulting in 6 months of increased revenues.

5/ Fees for category 36 and 44 make up approximately 5% of annual fee count in the 2005/06 Model Year. Because these fees are so variable, they have not been included in the projection.

**2/8/2008 - F2.5**

**Exhibit 1**

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**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885

**15-DAY NOTICE OF REVISIONS TO  
PROPOSED REGULATIONS**

**(Prepared for comment period commencing  
January 23, 2008 and ending February 7, 2008)**

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the California Coastal Commission is providing notice of changes made to proposed regulation amendments regarding filing fees. The Notice of Proposed Rulemaking for the originally proposed amendments was published in the Office of Administrative Law's California Notice Register on September 14, 2007 (See Register 2007, No. 37-Z). The 45-day comment period for the amendments began on September 14, 2007 and ended on October 29, 2007. The Commission first revised the amendments for a comment period beginning October 30, 2007 and ending November 13, 2007.

Commission staff is now proposing a second set of revisions to the regulations. These include revisions to the text of subsection 13055(h)(2) and 13055(h)(3), as well as revisions to the Statement of Reasons. These revisions will be considered by the Commission, and may be adopted, at its February 8, 2008 meeting. The revisions are substantially related to the originally proposed text, and are therefore being provided for public comment for 15 days, prior to the adoption of the amendments. **The public comment period for these revisions begins on January 23, 2008 and will end on February 7, 2008.**

**Written comments must be received by the Commission no later than 5 p.m. on February 7, 2008. Comments should be addressed to: CALIFORNIA COASTAL COMMISSION, 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA 95060-4508, ATTN: Madeline Cavalieri. Comments may also be submitted by fax to (831) 427-4877 or by e-mail to [mcavalieri@coastal.ca.gov](mailto:mcavalieri@coastal.ca.gov). For further information please contact Madeline Cavalieri at (831) 427-4863.**

All written comments received by February 7, 2008, which pertain to the indicated changes will be reviewed and responded to by the Commission's staff as part of the compilation of the rulemaking file. **Please limit your comments to the revisions.**

The revisions to the text of section 13055 are described in detail below. The entire text of the proposed regulations is attached as Exhibits A through E. **Originally proposed amendments are shown in strikeout and underline, the first revisions are shown in double strikeout and double underline, and the second revisions are shown in double strikeout and italics and double underline and italics.**

**2/8/2008 – F2.5**

**Exhibit H**

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## ***15-Day Notice of Revisions to Text of Proposed Regulations***

Revisions to the Statement of Reasons are described below, and attached as Exhibit F. **Revisions are shown in strikeout and underline.**

### **Revisions to 13055(h)(2)**

Commission staff has revised section 13055(h)(2) to increase clarity. Commission staff has replaced the word “may” with “shall” in the first sentence. This reflects the Commission’s intent to offer the discount to all qualifying applicants. Commission staff has also added the following language about the types of criteria that the executive director will use to determine the portion of the fee to be waived:

“Applications for projects that will create a greater public benefit will have a larger portion of the fee waived than applications for projects that will create a lesser public benefit. The executive director will determine the degree of public benefit based on a variety of factors, including, but not limited to (A) the total number of affordable units, (B) the proportion of affordable units in the development, (C) the degree of affordability, and (D) the availability of, and demand for, affordable units in the area. Applications for projects that will exceed current requirements for affordable housing under the law will receive a larger fee waiver than applications for projects which do not.”

These criteria are not exclusive; the executive director may use additional criteria to determine the portion of the fee to be waived.

### **Revisions to 13055(h)(3)**

Commission staff has revised section 13055(h)(3) to increase clarity. Commission staff has replaced the word “may” with “shall” in the first sentence. This reflects the Commission’s intent to offer the discount to all qualifying applicants. Commission staff has also added the following language to clarify how the executive director will determine if an alternative green building certification is equivalent to the LEED Gold standard:

“The executive director shall determine if an alternative certification is equivalent to the LEED Gold standard based on a comprehensive review of the certification program’s ability to ensure an equivalent or greater environmental benefit.”

### **Revisions to the Statement of Reasons**

Commission staff has revised the Statement of Reasons to include a more detailed description of the analysis used to determine the appropriate fee amounts for each category. The revision also adds an exhibit displaying the estimated filing fee revenue. This exhibit illustrates the relationship between the individual fees and the sum of the filing fee revenue. The revisions are shown in strikeout and underline.